IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.751 of 2007

Malathi .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Magistrate
and District Collector
Nagapattinam District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.R.A.Selvandran
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against Chandru, son of Periyathambi, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. The order of detention dated 17.4.2007 came to be passed by the second respondent on the basis of the ground case said to have taken place on 2.4.2007, when the Inspector of Police, Sembanarkoil, who was in charge of the station, received an information over phone that the detenu was selling poisonous illicit arrack to general public at Kaliyammam Koil Street, Thalachangadu. The police party proceeded on a prohibition raid and found the detenu selling illicit arrack. The detenu was apprehended, arrack was recovered in the presence of witnesses. A case was registered in Crime No.231 of 2007 on the file of the Sembanarkoil Police Station for the offences punishable under Sections 4(1)(aaa) and 4(1)(i) read with 4 (1-A) of the Tamil Nadu Prohibition Act, On chemical analysis, the Doctor opined that the arrack is mixed with 12.2 mg. of atrophine per 100 ml. arrack and the consumption of the same would endanger life. The order of detention is also supported with three adverse cases against the detenu for the offences of alike nature.

3. Challenging the said detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the second respondent herein in No.C.O.C.12/2007, dated 17.4.2007, to quash the same, to produce the detenu, now detained in Central Prison, Trichirapalli, before this Court and to set him at liberty.

4. We have perused the materials available on record and heard the submissions of Mr.R.A.Selvandran, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. From a perusal of the records it is clear that even though in the grounds of detention it is stated that the detenu was produced before the learned Judicial Magistrate No.II, Mayiladuthurai on 2.4.2007 and was remanded to judicial custody in the Sub-Jail, Poraiyar on the same day; that the samples of arrack and seized articles in the above said case were produced before the Court on 2.4.2007 and sample arrack bottles were sent for chemical analysis on 9.4.2007 through the Judicial Magistrate No.II, Mayiladuthurai on the requisition of the Inspector of Police, Sembanarkoil Police Station dated 2.4.2007, in the statement obtained under Section 161 (3) of the Code of Criminal Procedure, Mr.R.Rajendran, Head Constable, Sembanarkoil Police Station had stated that he had produced the contraband before the Judicial Magistrate on 10.4.2007 and then handed over the contraband and samples for chemical analysis only on 10.4.2007. Therefore, in our considered view the subjective satisfaction arrived at by the Detaining Authority is vitiated as a result of non application of mind on the part of the Detaining Authority to the above fact. On this ground the Detention Order is liable to be set aside.

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The habeas corpus petition is accordingly allowed and the order of detention passed by the second respondent in proceedings dated 17.4.2007 against the detenu is quashed and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1. The District Magistrate
   and District Collector
   Nagapattinam District.

2. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

3. The Public Prosecutor
   High Court, Madras.

4. The Joint Secretary to Government
   Public (Law & Order) Department
   Fort St., George, Chennai.9.

5. The Superintendent,
   Central Prison,
   Tiruchirapalli.

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TEJ(CO)
RD 25.9.07

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